

HOUSE No. 4139

House bill No. 4120, as changed by the committee on Bills in the Third Reading, and as amended and passed to be engrossed by the House. May 30 and May 31, 2012.

The Commonwealth of Massachusetts

—
In the Year Two Thousand Twelve
—

An Act reforming election laws.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to improve forthwith the administration of elections in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 51 of the General Laws is hereby amended by inserting after section 17 the
2 following section:—

3 Section 17A. In each municipality, the city or town clerk and the election director shall attend
4 annual training conducted by the office of the state secretary on the applicable state and federal
5 election laws and regulations. Upon completion of the training, they shall inform the board of
6 registrars and election commissioners.

7 SECTION 2. Said chapter 51 is hereby further amended by inserting after section 36 the
8 following section:-

9 Section 36A. The state secretary shall publish on the internet, in a manner accessible to the
10 public, an affidavit of voter registration in a printable electronic document format. This
11 document shall be a valid affidavit of voter registration under this chapter. The state secretary
12 shall post the electronic document in every language provided for in section 36.

13 The electronic affidavit of voter registration shall give registrants the option to enter data directly
14 into the form prior to printing out the affidavit or to print a blank form and manually enter
15 information. The registrant shall personally sign and mail, or deliver personally or by an
16 authorized person the completed affidavit of voter registration form to the appropriate city
17 elections department or town clerk's office; provided, however, that the registrant may mail, or
18 deliver personally or by an authorized person the form to the state secretary who shall cause it to
19 be delivered to the appropriate city elections department or town clerk's office.

20 SECTION 3. Section 42 of said chapter 51, as appearing in the 2010 Official Edition, is hereby
21 amended by inserting after the word "chapter", in line 2, the following words:- by any person at
22 least 16 years of age or older.

23 SECTION 4. Section 47A of said chapter 51, as so appearing, is hereby amended by adding the
24 following sentence:- If such person is at least 16 years of age and has not attained the
25 qualification of age, the affidavit of registration shall be re-examined by the registrar until such
26 person will, on or before the day of the next preliminary, primary, special or general election or
27 town meeting, attain full age, at which time the registrar shall enter such person's name in the
28 current annual register of voters.

29 SECTION 5. Chapter 54 of the General Laws is hereby amended by inserting after section 109
30 the following section:-

Section 109A. (a) For the purposes of this section, “audited precinct” shall mean any precinct selected in accordance with subsection (c) for the purpose of conducting audits as provided in this section.

(b) An audit shall be conducted pursuant to this section following any biennial state election, presidential primary, or special general election for senator in Congress or representative in Congress.

(1) Following a biennial state election in which the office of governor is contested, each precinct selected pursuant to subsection (c) shall conduct a hand-counted audit of votes cast on the day of election of: (i) races for the following offices in which more than 1 candidate’s name appears on the ballot: governor, representative in Congress, senator in Congress, if such office appears on the ballot, and 2 of the following offices chosen by random drawing: representative in the general court, senator in the general court, state secretary, attorney general, auditor, treasurer, and lieutenant governor, if such office appears on the ballot; and (ii) one statewide ballot question, if any appear on the ballot, chosen by random drawing.

(2) Following a biennial state election in which the candidates of each party for president and vice president appear on the ballot, each precinct selected pursuant to subsection (c) shall conduct a hand-counted audit of votes cast on the day of election of: (i) races for the following offices in which more than 1 candidate’s name appears on the ballot: president and vice president, representative in Congress, senator in Congress, if such office appears on the ballot, representative in the general court, and senator in the general court; and (ii) 1 statewide ballot question, if any appear on the ballot, chosen by random drawing.

(3) Following a presidential primary or special general election for representative in Congress or senator in Congress, each precinct selected pursuant to subsection (c) shall conduct a hand-counted audit of each race in which more than 1 candidate's name appears on the ballot in that precinct.

(4) If a valid petition for a recount is made pursuant to section 135 for a race subject to audit by this section, then the votes for that race shall not be audited in any precinct named in the petition; provided, however, that if an audit is has commenced in a precinct when the valid petition for a recount is made, the audit in said precinct shall be suspended. The audit of the race in question shall proceed in any precinct selected pursuant to subsection (c) not included in the petition for a recount.

(5) Any random drawing required by this subsection shall be conducted by the state secretary. Such drawing will occur at the same time and place as the drawing required by subsection (c).

(c) The precincts to be audited shall be chosen in a random, publicly verifiable, non-computerized drawing supervised by the state secretary within 48 hours after polls are closed. The drawing shall be fully observable to the public and representatives of each political party and shall use a procedure that can be easily understood to be random by members of the public. Notice of the time and place of the drawing shall be given at least 10 days in advance of the election on the electronic website of the state secretary. The number of precincts selected to be audited in this drawing shall be equal to 3 per cent of all precincts in the commonwealth, rounded up to the next highest whole number; provided, however, that if the audit is prompted by a special general election for representative in congress, the number of precincts selected to be

audited in this drawing shall be equal to 3 per cent of all precincts subject to that special election, rounded up to the next highest whole number.

(d) (1) The board of registrars or election commission in each municipality where 1 or more precincts selected to be audited are located shall conduct the audit. The board of registrars or election commission may employ tally clerks for the purpose of counting the ballots. Audits shall commence not later than 2 business days following the random drawing of precincts supervised by the state secretary and shall continue on each successive business day or other day at the discretion of the board or commission in each municipality. The time and place of the audits in each municipality where 1 or more precincts selected to be audited are located shall be publicly announced in advance. The audits shall be performed in full public view and conducted pursuant to the procedures for hand counts of ballots in sections 135 and 135A.

(2) The state secretary shall issue uniform written training materials for audit personnel to each municipality in the commonwealth at least 10 days prior to any election that will be audited pursuant to this section.

(3) Notwithstanding any general or special law or rule or regulation to the contrary, for the purpose of conducting the audit the board or commission shall unseal the envelopes or containers containing the ballots. The board or commission shall, when the audit is complete, enclose all the ballots in their proper envelopes or containers, seal each envelope or container with a seal provided therefor, and certify upon each envelope or container that it has been opened and again sealed in conformity to law.

(4) Voter intent shall be the standard for counting votes. Individuals charged with tabulating votes during the audit shall disregard the omission or inaccuracy of initials, the omission,

inaccuracy or misspelling of given names, and the misspelling of surnames, if the intent of the voter to express a preference for any particular individual can be ascertained. Such statements of voters shall be counted, tabulated and entered, together with any other votes cast, on official audit report forms provided by the state secretary.

(e) Upon completion of the audit in each municipality, the board of registrars or election commission shall record each race audited in each precinct on a separate audit report form provided by the state secretary. The registrars shall submit the completed audit report forms to the state secretary no later than the fourteenth day following the election. An audit report form shall provide for the entry of:

(1) the number of votes for each candidate, or each yes and no vote and the blank votes and over votes as recorded in the audit hand count;

(2) the election night tallies reported for each candidate or each yes and no vote and the blank votes and over-votes for the same ballots that were counted in the audit;

(3) the differences between the audit hand count results and the election night tallies for each candidate, yes and no question and blank votes;

(4) The number of votes for each contest for which voter intent is discernible but that are not marked by the voter according to the instructions provided to the voters under section 48 and any explanatory notes related thereto; and

(5) Any additional notes on perceived causes of discrepancies.

(f) Upon receipt of the results of the audit, the state secretary shall calculate the total number of votes for each candidate and ballot question as recorded in the audit hand count and shall

117 compare this total to the sum of the originally reported votes for each candidate and ballot
118 question in the audited precincts. When such comparison reveals a discrepancy between the
119 hand-counted audit and the originally reported tally of the audited precincts, the discrepancy
120 shall be analyzed to ascertain its cause. The state secretary shall oversee the analysis and shall
121 publish the findings and make the findings available online, along with the factual information
122 on which such findings were based, within 180 days.

123 (g) If there is a discrepancy between the results reached pursuant to an audit and originally
124 reported tallies, the hand count of the official paper ballots conducted pursuant to the audit shall
125 be the official vote of record and the board of registrars or election commission shall amend each
126 precinct tally sheet, official return book and check list delivered to the office of the registrars.

127 (h) If there is a discrepancy between the results reached in a precinct pursuant to an audit and the
128 originally reported tallies in that precinct in any audited race or any audited ballot question that
129 reasonably leads to doubt about the accuracy of election results, the state secretary may order
130 audits of such additional precincts, offices, or ballot questions as shall be necessary to ensure that
131 the election results are accurate.

132 (i) (1) Upon receipt of the results of the audit, the state secretary shall make information in the
133 audit reports publicly available on a precinct-by-precinct basis as soon as practicable, but no later
134 than 10 days after receipt of the audit report form, in both human and machine readable formats,
135 such as a spreadsheet or comma-separated-value file. This information shall also be posted on
136 the electronic website of the state secretary.

137 (2) The state secretary shall publish the results of the audit in the report required by section 133
138 or in some other document in which the results of the audit can easily be compared with the

139 number of votes received by each candidate for nomination and for election for a state and
140 federal office.

141 (3) The audit and publication of the results thereof shall be completed prior to the time the
142 commonwealth shall make a final determination concerning the appointment of its presidential
143 electors.

144 (j) The state secretary shall promulgate rules and regulations to implement the requirements of
145 this section.

146 SECTION 6. Costs incurred under section 5 shall be paid by the state using funds available to the
147 commonwealth pursuant to sections 101 to 106, inclusive, and in sections 251 to 258, inclusive,
148 of the federal Help America Vote Act of 2002, 42 U.S.C. sections 15301 to 15306, inclusive, as
149 it may be amended, and 42 U.S.C. sections 15401 to 15408, inclusive, as it may be amended.
150 The state secretary shall amend the state plan required under section 253(b) of the Help America
151 Vote Act of 2002, 42 U.S.C. section 15403(b) to include post election audits.

152 SECTION 7. Notwithstanding any general or special law to the contrary, the state secretary shall
153 promulgate rules and regulations under section 109A of chapter 54 of the General Laws on or
154 before July 1, 2013.

155 SECTION 7A. Notwithstanding any general or special law to the contrary, there shall be
156 established an elections task force. (a) Said task force shall undertake a study of the
157 implementation of ss. 3, 4, 5, and 6 of HB 4120. Said study shall include an analysis of : (1) the
158 state and local costs of implementing said proposals, the costs of increasing access to the Central
159 Registry of Voters, and the availability of federal funding through the Help America Vote Act;
160 (2) the administrative requirements for adopting such a system, including their impact upon poll

operations and upon the operation of municipal clerks offices on election day; (3) the possibility of fraud; (4) the effects upon finalizing a vote and possible recounts.

(b) The task force shall complete its study and submit its final report in writing to the joint committee on election laws and the state secretary no later than February 1, 2013.

(c) The task force shall consist of the house and senate chairs of the joint committee on election laws; the speaker of the house of representatives or his designee; the president of the senate or her designee; the house minority leader or his designee; the senate minority leader or his designee; the state secretary or his designee; the registrar of motor vehicles or her designee; 3 representatives of the Massachusetts Town Clerks Association, one of whom is the President of the Massachusetts Town Clerk Association (who shall serve as the task force chair), one of whom shall be from a town of between 2,001 and 12,000 inhabitants, and one of whom shall be from a town of 2,000 or fewer inhabitants, 3 representatives of the Massachusetts Municipal Association, one of whom shall be the chief election officer of a city under 100,000 inhabitants, one of who shall be the chief election officer of a city over 100,001 inhabitants; and 1 representative of each of the following groups: the League of Women Voters of Massachusetts, the Massachusetts Chapter of the NAACP, Common Cause, and MassVOTE, and OISTE.

SECTION 7B. Section 105 of chapter 54, as appearing in the 2010 Official Edition, is hereby amended, in line 30, by inserting after the words “seal up the same” the following:—
with a zip tie that has a unique serial number

SECTION 7C. Section 107 of chapter 54, as appearing in the 2010 Official Edition, is hereby amended by inserting at the end thereof the following new language:—

182 Each candidate for public office may appoint one poll watcher to observe the sealing of the
183 ballots after the polls have closed. Such supervision may not be precluded by any election
184 officer. Upon completion of the sealing of the ballots, the Warden shall provide the serial
185 number of the zip tie used to seal the ballots to any poll watcher upon request.

186 SECTION 8. Sections 1, 3 and 4 of this act shall take effect on April 1, 2013.

187 SECTION 9. Section 2 of this act shall take effect 60 days after the effective date of this act.

188 SECTION 10. Section 5 of this act shall take effect on January 1, 2014.